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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-1055**

13 **FRANCISCO JAVIER MELLADO**
176 Ski Way
14 **Chula Vista, CA 91911**

A C C U S A T I O N

15 **Registered Nurse License No. 799004**

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Complainant Louise R. Bailey, M.Ed., RN, brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs (Department).

22 2. On June 21, 2011, the Board issued Registered Nurse License Number, 799004 to
23 Respondent. The license was in full force and effect at all times relevant to the charges brought
24 herein and expired on January 31, 2013.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, Department, under the authority of the
27 following laws. All section references are to the Business and Professions Code, unless otherwise
28 indicated.

4. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an expired license within eight years after expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”

9. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

10. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

....

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

2 (4) Whether the licensee has complied with any terms of parole, probation,
3 restitution or any other sanctions lawfully imposed against the licensee.

4 (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4
5 of the Penal Code.

6 (6) Evidence, if any, of rehabilitation submitted by the licensee.

7 **COST RECOVERY**

8 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
12 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
13 included in a stipulated settlement.

14 **CAUSE FOR DISCIPLINE**

15 **(February 15, 2013 Criminal Conviction for Multiple Lewd Acts with a Child)**

16 14. Respondent has subjected his registered nurse license to disciplinary action under
17 Code sections 490 and 2761, subdivision (f), in that he was convicted of a crime that is
18 substantially related to the qualifications, functions, and duties of a registered nurse. The
19 circumstances are as follows:

20 a. On February 15, 2013, in a criminal proceeding entitled The People of the State
21 of California v. Francisco Javier Mellado, in San Diego Superior Court, South County Division,
22 case number CS260119, Respondent was convicted of two counts of violating Penal Code (PC)
23 section 288, subdivision (a), willfully and lewdly committing a lewd and lascivious act upon a
24 female child under the age of 14 years, a felony. Eight additional charges for violating PC section
25 288, subdivision (a), felonies, were dismissed pursuant to a plea bargain.

26 b. As a result of the conviction, Respondent was sentenced to be committed to the
27 custody of the California Department of Corrections for eight years, with credit for time served
28 during presentencing; to pay penalty assessments, fees, and fines of not less than \$420, and
restitution to the victim as to be determined; and to register pursuant to the provisions of PC 290.

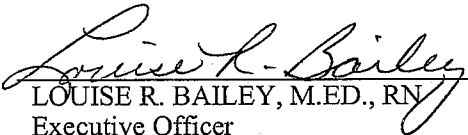
1 c. The facts that led to the conviction are that between November 11, 2006, and
2 November 11, 2007, Respondent engaged in ten acts of lewd and lascivious conduct with a
3 female under the age of 14 consisting of mutual touching of their genitals and mutual oral
4 copulation thereof.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Board of Registered Nursing issue a decision:

- 8 1. Revoking or suspending Registered Nurse License Number 799004, issued to
9 Francisco Javier Mellado
10 2. Ordering Francisco Javier Mellado to pay the Board of Registered Nursing the
11 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
12 Professions Code section 125.3; and
13 3. Taking such other and further action as deemed necessary and proper.
14

15
16 DATED: MAY 14, 2013

17 
18 LOUISE R. BAILEY, M.ED., RN
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant
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7 *Attorneys for Applicant, Louise R. Bailey, M.Ed.,*
8 *RN, Executive Officer Board of Registered Nursing,*
Department of Consumer Affairs, State of California

SAN DIEGO SUPERIOR COURT
OCT 24 2012
CLERK OF THE SUPERIOR COURT
BY: _____

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
10 COUNTY OF SAN DIEGO, SOUTH BAY DIVISION

11 **PEOPLE OF THE STATE OF CALIFORNIA,**

12 Plaintiff,

13 v.

14 **FRANCISCO JAVIER MELLADO,**

15 Defendant;

16 **LOUISE R. BAILEY, M.ED., RN, EXECUTIVE**
17 **OFFICER OF THE BOARD OF REGISTERED**
18 **NURSING, DEPARTMENT OF CONSUMER**
19 **AFFAIRS,**

Applicant.

Case No. CS260119

**STIPULATION AND ORDER TO
RESTRICT PRACTICE AS A
REGISTERED NURSE**

[Penal Code § 23]

Date: October 24, 2012
Time: 8:30 A.M.
Dept: 14

20 IT IS HEREBY STIPULATED that Defendant Francisco Javier Mellado is prohibited from
21 practicing as a registered nurse as a condition of pretrial O.R. release, bail or as condition of
22 probation, pending the resolution of this criminal proceeding and until any Board of Registered
23 Nursing Disciplinary proceeding becomes final, whichever concludes last.

24
25 DATED: Oct. 24, 2012

26
27 DATED: Oct. 24, 2012


FRANCISCO JAVIER MELLADO,
Defendant


JULIANA HUMPHREY
Attorney for Defendant

1 DATED: October 24, 2012

KAMALA D. HARRIS
Attorney General of California

2
3
4 G. Michael German

5 G. MICHAEL GERMAN
6 Deputy Attorney General
7 Attorneys for Applicant
8 Louise R. Bailey, M.Ed., R.N.,
9 Executive Officer
10 Board Of Registered Nursing,
11 Department Of Consumer Affairs,
12 State Of California

13 **IT IS SO ORDERED.**

14 DATED: 10/24, 2012.

15 Kathleen M. Lewis
16 JUDGE OF THE SUPERIOR COURT

17 KATHLEEN M. LEWIS
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